

**COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF CONSUMER AFFAIRS & BUSINESS REGULATION  
DIVISION OF ENERGY RESOURCES**

**MASSACHUSETTS  
RENEWABLE ENERGY PORTFOLIO STANDARD**

**RESPONSE TO COMMENTS**

**on the February 9, 2004**

***DRAFT* GUIDELINE**

**ON THE REGULATIONS WITH REGARD TO THE  
MA RPS ELIGIBILITY OF GENERATION UNITS THAT RE-TOOL WITH  
LOW EMISSION, ADVANCED BIOMASS TECHNOLOGIES**

**APRIL 16, 2004**

**1.0 INTRODUCTION**

On February 9, 2004, the Division of Energy Resources (DOER) issued the "*Draft* Guideline on the Regulations with Regard to the MA RPS Eligibility of Generation Units That Re-tool with Low Emission, Advanced Biomass Technologies" (Draft Guideline). DOER posted the Draft Guideline on its Internet website with an invitation for interested persons to provide comments. In addition, DOER posted the invitation at the website of the NEPOOL GIS ([www.nepoolgis.com](http://www.nepoolgis.com)) and sent it by e-mail to a long list of stakeholders of the MA Renewable Energy Portfolio Standard (RPS) and to participants and other correspondents of the MA Biomass Energy Working Group.

Written comments were received from the following:

- Massachusetts Department of Environmental Protection
- Brown, Olson & Wilson, P.C., for Bridgewater Power Company, LLP (Bridgewater)
- Cape Wind Associates, LLC (Cape Wind)
- Public Service of New Hampshire (PSNH)
- Ridgewood Renewable Power, LLC (Ridgewood)

DOER considered and appreciates the thoughtful comments from all five organizations. As a result, DOER has prepared this Response document and made appropriate editorial corrections

and clarifying changes in language<sup>1</sup> in its final "Guideline on the MA RPS Eligibility of Generation Units That Re-tool with Low Emission, Advanced Biomass Technologies" (Final Guideline) issued concurrently with this Response document.

This document addresses some, but not all, of the comments received. The responses are limited to those comments that were germane to the issue addressed in the Draft Guideline: the RPS eligibility of Generation Units that re-tool with "low emission, advanced biomass power conversion technologies." This document does not respond to the following interesting issues that were also raised in some of the comments:

- Expanding what should qualify as "advanced" (Bridgewater);
- Considering heat rate in evaluating both "low emissions" and "advanced" (Ridgewood);
- Expanding the range of emissions and discharges for "low emissions" (Ridgewood); and
- Changing the definition of Vintage Generation (Ridgewood).

DOER responds below to the following comments (as here re-stated by DOER):

1. The Draft Guideline violates the RPS statute and regulations (Cape Wind);
2. The Draft Guideline should not be effected without "full administrative proceedings" (Cape Wind); and
3. The Draft Guideline would have a negative impact on the future financing and development of new renewable projects (Cape Wind and PSNH) and may unfairly benefit some biomass plants currently under PURPA contracts (PSNH).

## **2.0 RESPONSES**

### **2.1 The Draft Guideline violates the RPS statute and regulations.**

Cape Wind correctly quotes the enabling statute and regulations for RPS,<sup>2</sup> the former with regard to the distinction between "existing" and "new," the latter with regard to the date after which a plant may be considered "new." However, both quotations are taken out of their larger contexts. The Draft Guideline states the following in section 2.3, footnote 8:

This interpretation with regard to biomass plants is consistent with the RPS statutory language at M.G.L. Chapter 25A, Section 11F. Paragraph (b) of Section 11F provides a list of what is considered to be a "renewable energy generating source" for the purposes of that section. In the case of biomass, the language specifies "(viii) low emission, advanced biomass power conversion technologies . . ." The next sentence in that paragraph goes on to state, "The division [DOER] may also consider any previously operational biomass facility retrofitted with advanced conversion technologies as a renewable energy generating source." Thus, for the purposes of

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<sup>1</sup> The clarifying changes are in sections 1.0 (added "qualify as New Renewable Generation and" in the last two lines); 2.1 (language about post-retooling start-up date in third sentence); 2.3 first bullet (added "gasification or" and new footnote 8) and footnote 9 (rewrote last sentence); and 3.0 (deleted "primarily" from first sentence; added "in a broader public policy context" in the first sentence after bullet 8; and made several revisions in bullets 1 and 5).

<sup>2</sup> The statutory language at M.G.L. c.25A, § 11F, may be accessed at <http://www.state.ma.us/legis/laws/mgl/25a-11f.htm>; the regulations at 225 CMR 14.00 et seq. may be viewed via a link at <http://www.state.ma.us/doer/rps/regs.htm>.

RPS, the statute treats an RPS-ineligible biomass plant no differently than other non-renewable plants (such as coal or oil fired plants).

The Final Guideline is revised to state more precisely that the statute treats any “previously operational” (i.e., operational on or before December 31, 1997) biomass plant that does not use “low-emission, advanced biomass power conversion technologies” as not being a “renewable energy generating source.” DOER therefore considers such a biomass facility retrofitted after 1997 to be a “new renewable energy generating source.” However, if such a facility were retrofitted and returned to operation on or before December 31, 1997, then it could be qualified as “new” only under the Vintage Waiver provision of the regulations (225 CMR 14.05(2)).

Cape Wind also asserts that “The RPS regulations already take great liberties with the Legislative intent of the Electric Restructuring Act<sup>3</sup> through the inclusion of “Vintage Waiver” provisions.” However, DOER regards its definitions of “Vintage Generation Unit” and related terms<sup>4</sup> and its provisions for a Vintage Waiver<sup>5</sup> to be reasonable and practical means of implementing the statutory provision that “a new renewable energy generation source is one that begins commercial operation after December 31, 1997, or that represents an increase in generating capacity after December 31, 1997, at an existing facility.”<sup>6</sup>

The Final Guideline, is intended to meet the legislative intent of providing regulatory incentives for the development of new renewable energy sources to serve Massachusetts electricity customers. DOER expects the Guideline to do just that: to result in an increased supply of electricity from “new renewable energy resources” (as defined in the statute) by providing incentive for investments in new, advanced technology at pre-1998 biomass-fired power plants that currently use older, stoker combustion technology (and potentially at fossil fueled power plants, as well). Such biomass plants, although utilizing a fuel acknowledged as renewable, are not regarded in the statute as “renewable energy generating sources,” let alone as “new.” Furthermore, at least some of them have experienced or soon would experience declining demand for their output, thus *decreasing* New England's use of one its major, indigenous, renewable resources, which would be contrary to the RPS legislative intent of the statute. The Guideline should reverse that trend and, thereby, help to meet that intent.

## **2.2 The Draft Guideline should not be effected without “full administrative proceedings.”**

In issuing the Draft Guideline, DOER was not, contrary to Cape Wind's assertion, “altering the regulations” and, therefore, does not need to conduct “full administrative proceedings.” As stated in the Draft Guideline (second paragraph of section 1.0):

The Guideline does not change the RPS regulations. Rather, the Guideline represents DOER’s interpretation of the RPS regulations and of the statute on which they are based.

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<sup>3</sup> Section 50 of Chapter 164, Acts of 1997, which inserts new section 11F at M.G.L. chapter 25A (see footnote 1.)

<sup>4</sup> In the RPS regulations at 225 CMR 14.02. In addition to Vintage Generation Unit, see the definitions of Historical Generation Rate, Vintage Generation, and New Renewable Generation.

<sup>5</sup> In the RPS regulations at 225 CMR 14.05(2).

<sup>6</sup> At the last sentence of Section 11F(a) of M.G.L. chapter 25A.

In other words, DOER is making clear its understanding of its own RPS regulations, and this understanding is consistent with the language and intent of the enabling statute.

In a related comment, PSNH expressed concern that "the Draft Guideline is not a simple interpretation of the RPS regulation, but is rather a significant revision to common understanding of the RPS rules . . ." and that this is a "substantive change." Any such "common understanding" was a misunderstanding, and, as explained above, the Draft and Final Guidelines represent DOER's interpretation of what is written in the RPS statute and regulations.

### **2.3 The Draft Guideline would have a negative impact on the future financing and development of new renewable projects and may unfairly benefit some biomass plants currently under PURPA contracts.**

Although the substance of the Guideline is driven by the language of the RPS statute and regulations, and not by its impact on the marketplace, DOER is aware that the Guideline will have impacts of public policy interest and appreciates these concerns. These were discussed in section 3.0 of the Draft Guideline, which has been clarified in response to the comments.

DOER expects the Guideline to provide incentive for increased development of new renewable projects, at least with regard to retooling older, currently RPS-ineligible biomass plants. While DOER does not expect any short-term reduction in the value of RPS-qualified GIS certificates, whose current high value is a factor driving consideration of new capital investment, the medium and long term effects are more difficult to predict. Increased supply of certificates could, *if* supply were to exceed demand, lower their value. However, the market demand for new renewable generation does seem bound to increase steadily during the current decade and beyond. In particular, the requirements of RPS in both Connecticut and Maine are under revision at the time of this writing, and New York is actively considering the institution of RPS, as well.

With regard to the question of whether the Guideline may provide competitive advantage to some biomass plants (as asserted by PSNH) that are operating under PURPA contracts, DOER believes that it would be inappropriate to be influenced by such current and unique contractual arrangements. In any case, the duration of existing PURPA contracts is limited.

### **3.0 Conclusion**

DOER, after giving due consideration to the comments submitted by interested entities, has made some corrections and improvements to the Draft Guideline, and hereby issues a Final Guideline concurrent with this document. The Final Guideline is effective immediately upon its issuance.